UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,378	08/20/2003	Scott Milton Fry	TUC920030083US1	6135

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EXAMINER
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ART UNIT	PAPER NUMBER
2129	

MAIL DATE	DELIVERY MODE
12/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/644,378*	FRY ET AL.
	Examiner	**Art Unit**	
	PETER COUGHLAN	2129	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>15 December 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /David R Vincent/
  Supervisory Patent Examiner, Art Unit 2129

Continuation of 11. does NOT place the application in condition for allowance because: With the final Office Action prosecution is closed. Arguments have been considered but are not persuasive.

Concerning the argument under §706.07(a), the applicant amended the claims after the non-final office action. The Examiner is allowed to introduce new grounds of rejections.
In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is not what individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re Keller, 648 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983); In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969).

Independent claim 18 is very broad. This claim could be rejected by any programming manual for currently used languages, such as C++, of Java. Instead, the Examiner uses specific references which describe specific examples of programming. The common ground is the 'failure prediction software' is a function.

Bowles, Hughes, Monsef and Wavish are used in claim 18. 'Failure prediction algorithm' of applicant is equivalent to 'analysis of system structures, fault trees, event trees, the reliability of degradable systems, and the assessment of system criticality based on the severity of a failure and its probability of occurrence' of Bowles. (Bowles, abstract) 'Fuzzy logic rules' of applicant is equivalent to 'fuzzy logic' of Bowles. 'Natural language format' of applicant is equivalent to 'natural language expressions' of Bowles. (Bowles, p448, C2, p435 C2:20 through p436 C1:14) The ability to 'generate machine readable code' of applicant is equivalent to running the 'SMART' application of Hughes. (Hughes, p350, C2:35 through P351, C1:4;) 'Testing … with sample data to produce a result' of applicant is equivalent to 'simulation' of Monsef. (Monsef, p186 C2:26-36) 'Selectively revising' a 'prediction algorithm' of applicant is equivalent to 'selectively modify … until a level of accuracy in accordance with said predetermined criteria' of Wavish. (Wavish, C9:54-67, C2:5-26) 'Expected result' of applicant is equivalent to 'actual information' of Monsef. (Monsef, p186 C2:26-36)

Bowles is used to introduce failure and fuzzy logic. Hughes is related to the application. Applicant argues that Hughes is not 'compiled.' It should be noted that the claims within the application are not compiled either. Monsef teaches failures using testing and simulation. Wavish is used to introduce genetic algorithms which is equivalent is 'selectively revising.'

Independent claim 25 has Kanagawa in addition to the references cited above. Kanagawa is related to mean time between failures based on fuzzy characteristics. Specifically 'Gathering performance data' of applicant is illustrated by the ability to have 'n items be drawn at random' of Kanagawa. (Kanagawa, p317, C2:7-16) 'Failure prediction algorithm' of applicant is equivalent to 'reliability demonstration test' of Kanagawa. 'Fuzzy logic rules' of applicant is equivalent to fuzzy theory' of Kanagawa. 'Adjusting' of applicant is disclosed by the fact that 'the coefficients aij must be chosen so that the membership functions are continuous' of Kanagawa. (Kanagawa, p318, C1:20 through p319, C1:20, p317, C1:14-27).